

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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DAIRY, LLC, a Delaware Limited
Liability Company,

Plaintiff,

v.

MILK MOOVEMENT, INC., a foreign
Corporation, and MILK MOOVEMENT,
LLC, a Delaware Limited
Liability Company,

Defendants.

No. 2:21-cv-02233 WBS AC

ORDER RE: REQUESTS TO SEAL

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Dairy, LLC initiated this action against Milk
Moovement, Inc. and Milk Moovement, LLC alleging trade secret
misappropriation under federal and California law, and
intentional interference with contractual relations. (First Am.
Compl. (Docket No. 48).) On February 14, 2023, the court denied
various requests to seal without prejudice. (Docket No. 237.)
Before the court are (1) Dairy's renewed request to seal portions
of the parties' briefing related to Milk Moovement's motion for

1 leave to amend counterclaims (Dairy Req. to Seal (Docket No.
2 248)), and (2) Milk Moovement's request to seal certain materials
3 filed in connection with its now filed Second Amended
4 Counterclaims (Milk Moovement Req. to Seal (Docket No. 250)).¹

5 A party seeking to seal a judicial record bears the
6 burden of overcoming a strong presumption in favor of public
7 access. Kamakana v. City & County of Honolulu, 447 F.3d 1172,
8 1178 (9th Cir. 2006). The party must "articulate compelling
9 reasons supported by specific factual findings that outweigh the
10 general history of access and the public policies favoring
11 disclosure, such as the public interest in understanding the
12 judicial process." Id. at 1178-79 (citation omitted); see also
13 Ctr for Auto Safety v. Chrysler Group, LLC, 809 F.3d 1092, 1098-
14 99 (9th Cir. 2016) (explaining that the compelling reasons
15 standard should apply to all motions which are correlated to the
16 underlying cause of action). In ruling on a motion to seal, the
17 court must balance the competing interests of the public and the
18 party seeking to keep records secret. See Kamakana, 477 F.3d at
19 1179.

20 The Ninth Circuit has recognized that an example of a
21 compelling reason for sealing records includes "sources of
22 business information that might harm a litigant's competitive
23 standing." Ctr. For Auto Safety, 809 F.3d at 1097 (quoting Nixon
24 v. Warner Commc'ns, Inc., 435 U.S. 539, 598 (1978)); see also
25 Smith v. United States, 2022 WL 3578568, *1 (E.D. Cal. Aug. 19,

26
27 ¹ On February 23, 2023, the court granted Milk
28 Moovement's motion for leave to amend counterclaims. (Docket No.
244.)

2022) (explaining that business information may include “pricing, profit, and customer usage information kept confidential by a company that could be used to the company’s competitive disadvantage”).

I. Dairy’s Renewed Request to Seal

Dairy identifies three categories of information it seeks to protect: (1) discussion of its “at-issue trade secrets”; (2) terms of business arrangements in confidential contracts with United Dairymen of Arizona (“United Dairymen”), California Dairies, Inc. (“California Dairies”), and Borden Dairy; and (3) internal analyses and strategies. (See Dairy Req. to Seal.)

To protect its alleged trade secrets, Dairy seeks to seal portions of the declaration of Duane Banderbob, Dairy’s Chief Operating Officer, which is attached as exhibit N to the Patchen declaration.² (Patchen Decl., Ex. N (Docket No. 224-15).) (See Dairy Req. to Seal at 3-4.) Specifically, Dairy seeks to seal the portions of the declaration which “discuss the details and functionality of Dairy’s producer payroll application, its pooling methodology, and a confidential report . . . that reveals the logic of Dairy’s pooling methodology.” (Id. at 4.) The request to seal appears to sufficiently show that sealing is necessary to protect Dairy’s alleged trade secrets. Accordingly, Dairy’s request to seal the identified portions of exhibit N will be granted.

To protect the terms of its business arrangements with

² Dairy seeks to seal exhibit N at 71:19-23 fn.2, 72:3-13, 73:24-26, 74:1-12, 74:21-22, 78:1, and 79:1-13. (Req. to Seal at 2.)

1 United Dairymen, California Dairies, and Borden Dairy, Dairy also
2 seeks to seal seven documents in their entirety: (1) exhibit A to
3 the Patchen declaration: the "Software Assignment and Grant-Back
4 License Agreement" (the "Software Assignment Agreement") (Patchen
5 Decl., Ex. A (Docket No. 224-2)); (2) exhibit B to the Patchen
6 Declaration: the "Nondisclosure Agreement" (Patchen Decl., Ex. B
7 (Docket No. 224-3)); (3) exhibit 10 to the Hagey Declaration: a
8 letter sent from Dairy's CFO to United Dairymen's CEO (the "UDA
9 Letter") (Hagey Decl., Ex. 10 (Docket No.204-12)); (4) exhibit 11
10 to the Hagey Declaration: an order form which contains
11 descriptions of Dairy software solutions and confidential
12 contract terms such as term length and monthly pricing (Hagey
13 Decl., Ex. 11 (Docket No. 204-13)); (5) exhibit 13 to the Hagey
14 Declaration: a user agreement between Dairy and CDI which governs
15 Dairy's commercial relationship with CDI (Hagey Decl., Ex. 13
16 (Docket No. 204-15)); (6) exhibit 14 to the Hagey Declaration: a
17 user agreement (Hagey Decl., Ex. 14 (Docket No. 204-16)); and (7)
18 exhibit 15 to the Hagey Declaration: a service level agreement
19 (Hagey Decl., Ex. 15 (Docket No. 204-17).) (See Dairy Req. to
20 Seal at 5-6.)

21 Dairy argues that, because these documents reflect
22 Dairy's "business strategies, negotiating positions, and agreed-
23 to commercial terms," Dairy argues that they could "harm Dairy's
24 position vis-à-vis competitors and counterparties in future
25 similar negotiations." (Id.)

26 The request to seal exhibit 11 appears to sufficiently
27 show that sealing is necessary to protect Dairy's business
28 information. Accordingly, Dairy's request to seal exhibit 11

1 will be granted. By contrast, with the exceptions of the
2 purchase price and license fee in the Software Assignment
3 Agreement (see Ex. A at 2) and the term length in the
4 Nondisclosure Agreement (see Ex. B at 3), the other documents
5 appear to be standard, almost "boilerplate" contracts which would
6 not disclose any protected information and thus Dairy's concerns
7 do not outweigh the history of access and public policies
8 favoring disclosure to the public. Therefore, the court must
9 deny Dairy's request to seal the entirety of the Software
10 Assignment Agreement, Nondisclosure Agreement, UDA Letter, and
11 exhibits 13, 14, and 15 without prejudice. The court will
12 consider a more tailored request that seeks to seal only the
13 protected information within these documents, rather than the
14 entirety of the documents.

15 To protect its internal analyses and strategies, Dairy
16 also seeks to seal: (1) the entirety of an email from Dairy
17 investor, Banneker Partners, to Dairy's CEO, Scott Sexton, which
18 discusses Milk Moovement as a then new entrant to the market (the
19 "Banneker Email") (Hagey Decl., Ex. 1 at 65-66); (2) an internal
20 email in which a Dairy employee provides notes from a call with
21 CDI and makes recommendations to the Dairy team (Mot. for Leave
22 at 46:16-19 and 46:21-22); and (3) an internal email in which a
23 Dairy employee provides notes from a call with California Dairies
24 and recommended next-steps and strategies (Mot. for Leave at
25 46:25-27 and 47:1-10). (See Dairy Req. to Seal at 6-8.) The
26 request to seal these portions of Milk Moovement's motion appears
27 to sufficiently show that sealing is necessary to protect Dairy's
28 business information. Accordingly, Dairy's request to seal

1 Exhibit 2 and the two emails will be granted.

2 II. Milk Moovement's Request to Seal

3 Milk Moovement seeks to seal certain materials filed in
4 support of its Second Amended Counterclaims which were designated
5 as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES
6 ONLY" under the stipulated protective order (Docket Nos. 54 61).
7 (See Milk Moovement Req. to Seal at 1.) As Milk Moovement
8 acknowledges, a confidentiality agreement between the parties
9 does not per se constitute a compelling reason to seal documents
10 outweighing the interests of public disclosure and access. There
11 needs to be an independent basis for sealing or redacting a
12 document beyond the fact that material is within the purview of a
13 stipulated protective order.

14 While Milk Moovement does not provide an independent
15 basis, many of the materials it seeks to seal are the same as
16 those which Dairy seeks to seal. Specifically, Milk Moovement
17 seeks to seal portions of its Second Amended Counterclaims as
18 well as the attached exhibits: exhibit 1 (the UDA Letter) and
19 exhibit 2 (the Banneker Email). (Milk Moovement Req. to Seal at
20 1.) For the same reasons discussed above, the request to seal
21 the Banneker Email and portions of the Second Amended
22 Counterclaims which reference Dairy's business information and
23 internal emails will be granted. The request to seal the UDA
24 Letter and all other portions of the Second Amended Counterclaims
25 for which there is no independent basis for sealing will be
26 denied without prejudice.³

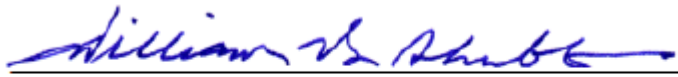
27 ³ This includes the request to seal the Second Amended
28 Counterclaims at 30:20-23, 32:11, 33:16-19, 33:21-22, 33:25-27,

1 IT IS THEREFORE ORDERED that the requests to seal
2 (Docket Nos. 248, 250) be, and the same hereby are, GRANTED in
3 part and DENIED in part. Milk Moovement's motion for leave to
4 amend counterclaims at 43:20-24, 46:16-19, 46:21-22, 46:25-27,
5 and 47:1-10 (Docket No. 204-1); exhibit 1 of the Hagey
6 Declaration at 65-66 (Docket No. 204-3); the entirety of exhibit
7 11 of the Hagey Declaration (Docket No. 204-13); exhibit N of the
8 Patchen Declaration at 71:19-23 fn.2, 72:3-13, 73:24-26, 74:1-12,
9 74:21-22, 78:1, and 79:1-13 (Docket No. 224-15); and the Second
10 Amended Counterclaims at 30:20-23, 32:11, 33:16-19, 33:21-22,
11 33:25-27, 34:1-9, 34:21-22, and exhibit 2 (Docket No. 249) are
12 ordered SEALED.

13 The requests to seal exhibits A and B of the Patchen
14 Declaration (Docket Nos. 224-2, 224-3); exhibits 10, 13, 14, and
15 15 of the Hagey Declaration (Docket Nos. 204-12, 204-15, 204-16,
16 204-17); Milk Moovement's motion for leave to amend counterclaims
17 at 6:19-23, 9:27, 11:11-13, 16:25-27, 17:1-3, and 18:24 (Docket
18 No. 204-1); exhibit 1 to the Hagey Declaration at 29:18-24,
19 45:11, 47:22-23, 48:21-28, 49:1-3, and 61-63 (Docket No. 204-3);
20 Dairy's opposition to the motion for leave at 9:22-24, 22:10-11,
21 24:8-9, 36:2-4, and 36:6-17 (Docket No. 224); Milk Moovement's
22 reply at 8:18-19 (Docket No. 233); and the Second Amended
23 Counterclaims at 16:18-26, 27:5-22, 28:6-8, 28:21-23, 32:9-10,
24 32:12-26, 33:1-15, 33:20, 33:23-24, 34:12-18, 35:21-27, 36:1-2,
25 36:7-16, and exhibit 2 (Docket No. 249) be, and the same hereby
26 are, DENIED WITHOUT PREJUDICE.

27
28 34:1-9, and 34:21-22.

1 Dated: March 9, 2023


WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE